

§ 707.3

10 CFR Ch. III (1–1–09 Edition)

under the authority of the Atomic Energy Act of 1954, as amended:

(1) Management and operating contracts; and

(2) Other contracts or subcontracts with a value of \$25,000 or more, and which have been determined by DOE to involve:

(i) Access to or handling of classified information or special nuclear materials;

(ii) High risk of danger to life, the environment, public health and safety, or national security; or

(iii) Transportation of hazardous materials to or from a DOE site.

(b) Individuals described in § 707.7 (b) and (c) will be subject to random drug testing; to drug testing as a result of an occurrence, as described in § 707.9; and to drug testing on the basis of reasonable suspicion, as described in § 707.10.

(c) Applicants for employment in testing designated positions will be tested in accordance with § 707.8.

§ 707.3 Policy.

It is the policy of DOE to conduct its programs so as to protect the environment, maintain public health and safety, and safeguard the national security. This policy is advanced in this rule by requiring contractors and subcontractors within its scope to adopt procedures consistent with the baseline requirements of this part, and to impose significant sanctions on individuals in testing designated positions or with unescorted access to the control areas of certain DOE reactors, who use or are involved with illegal drugs.

§ 707.4 Definitions.

For the purposes of this part, the following definitions apply:

Collection Site Person means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.

Confirmed Positive Test means, for drugs, a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.

Counseling means assistance provided by qualified professionals to employees, especially, but not limited to those employees whose job performance is, or might be, impaired as a result of illegal drug use or a medical-behavioral problem; such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the individual after completion of treatment and return to work.

Drug Certification means a written assurance signed by an individual with known past illegal drug involvement, as a condition for obtaining or retaining a DOE access authorization, stating that the individual will refrain from using or being involved with illegal drugs while employed in a position requiring DOE access authorization (security clearance).

Employee Assistance means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of employees, particularly those which adversely affect behavior and job performance.

Hazardous Material means any material subject to the placarding requirements of 49 CFR 172.504, table 1, and materials presenting a poison-inhalation hazard that must be placarded under the provisions of 49 CFR 172.505.

Illegal Drug means a controlled substance, as specified in Schedules I through V of the Controlled Substances Act, 21 U.S.C. 811, 812. The term “illegal drugs” does not apply to the use of a controlled substance in accordance with terms of a valid prescription, or other uses authorized by law.

Management and Operating Contract means an agreement for the operation, maintenance, or support, on behalf of the Government, of a Government-owned or controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of DOE.

Medical Review Officer (MRO) means a licensed physician, approved by DOE to perform certain functions under this part. The MRO is responsible for receiving laboratory results generated by an employer's drug testing program, has knowledge of illegal drug use and

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other substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's positive test result, together with that person's medical history and any other relevant biomedical information. For purposes of this part a physician from the site occupational medical department may be the MRO.

Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any Department of Energy or Department of Energy-controlled operation, if the deviation has environmental, public health and safety, or national security protection significance. Incidents having such significance include the following, or incidents of a similar nature:

- (1) Injury or fatality to any person involving actions of a Department of Energy contractor employee.
- (2) Involvement of nuclear explosives under Department of Energy jurisdiction which results in an explosion, fire, the spread of radioactive material, personal injury or death, or significant damage to property.
- (3) Accidental release of pollutants which results or could result in a significant effect on the public or environment.
- (4) Accidental release of radioactive material above regulatory limits.

Random Testing means the unscheduled, unannounced urine drug testing of randomly selected individuals in testing designated positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

Reasonable Suspicion means a suspicion based on an articulable belief that an employee uses illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in § 707.10.

Referral means the direction of an individual toward an employee assistance program or to an outside treatment facility by the employee assistance program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from illegal drug use or other problems. Referrals to an employee assistance program can be made by the individual (self-refer-

ral), by contractor supervisors or managers, or by a bargaining unit representative.

Rehabilitation means a formal treatment process aimed at the resolution of behavioral-medical problems, including illegal drug use, and resulting in such resolution.

Special Nuclear Material has the same meaning as in section 11aa of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

Specimen Chain of Custody Form is a form used to document the security of the specimen from time of collection until receipt by the laboratory. This form, at a minimum, shall include specimen identifying information, date and location of collection, name and signature of collector, name of testing laboratory, and the names and signatures of all individuals who had custody of the specimen from time of collection until the specimen was prepared for shipment to the laboratory.

Testing Designated Position names a position whose incumbents are subject to drug testing under this part.

Subpart B—Procedures

§ 707.5 Submission, approval, and implementation of a baseline workplace substance abuse program.

(a) Each contractor subject to this part shall develop a written program consistent with the requirements of this part and the guidelines of the Department of Health and Human Services and subsequent amendments to those guidelines ("Mandatory Guidelines for Federal Workplace Drug Testing Programs," 53 FR 11970, April 11, 1988; hereinafter "HHS Mandatory Guidelines"), and applicable to appropriate DOE sites. Such a program shall be submitted to DOE for review and approval, and shall include at least the following baseline elements:

- (1) Prohibition of the use; possession, sale, distribution, or manufacture of illegal drugs at sites owned or controlled by DOE;